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OFFICE OF PETITIONS

In re Application of	:	
Sekiya et al.	:	LETTER GRANTING
Application No. 09/988,845	:	FILING DATE
Filed: 16 November, 2001	:	
Attorney Docket No. 2271/59695-C	:	

This is a response to the paper styled as a petition under 37 CFR 1.182, filed on 29 May, 2003, which is being treated as a petition under 37 CFR 1.181 to accord the above-identified application a filing date of 16 November, 2001, rather than the currently-accorded filing date of 19 November, 2001.

Petitioners state that the application was originally deposited with the USPS in Express Mail service on 16 November, 2001, but that the application package was returned as undeliverable by the USPS, and was re-deposited on 19 November, 2001. In support, on 8 July, 2002, petitioners supplied a copy of their Express Mail receipt, bearing a "date-in" of 16 November, 2001.

The USPTO is aware that the USPS suspended Express Mail service to Washington, D.C. ZIP Codes 202XX through 205XX (e.g. 20231) from 16 November, 2001, through 29 November, 2001. On 9 October, 2001, the USPTO published a notice in the Official Gazette providing guidance in the situation in which a post office refuses to accept the deposit of mail for delivery by Express Mail service.¹ The guidance set forth in that notice also applies if a post office refuses to accept the deposit of correspondence for delivery by Express Mail due to the suspension of the USPS's Express Mail service to Washington, D.C., ZIP Code 20231, as well as the situation in which correspondence is returned as undeliverable due to this suspension.

The guidance set forth in the above-mentioned Official Gazette notice is reproduced below:

¹ See United States Postal Service Interruption and Emergency, 1251 Off. Gaz. Pat. Office 55 (October 9, 2001).

Where the USPS refuses to accept the deposit of mail for delivery by express mail.

In some cases, due to the recent emergency, certain post offices are refusing to accept the deposit of mail for delivery by Express Mail service. The USPTO is also designating this interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). In addition, if a party attempts to deposit correspondence for delivery to the USPTO with the USPS by Express Mail under 37 CFR 1.10 ("Express Mail Post Office to Addressee") and the USPS refuses to accept such correspondence, the party is advised to take the following action: mail the correspondence to the USPTO by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail. The statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence. The statement must be signed in accordance with 37 CFR 10.18. The correspondence should be mailed as set out in 37 CFR 1.1(a) and include the special box designation: BOX FILING DATE.

Where mail is put into an Express Mail "Drop Box" and given an incorrect "date in".

In some cases a person may use an Express Mail "drop box" without realizing that the local post office is not accepting Express Mail. In that situation, the provisions of 37 CFR 1.10(d) may apply. Usually 37 CFR 1.10(d) is invoked where correspondence is placed in an Express Mail "drop box" prior to the last pick up that is scheduled for the drop box for that day, but the USPS enters an incorrect "date-in" on the Express Mail mailing label, usually the next day's date. To invoke 37 CFR 1.10(d), however, a petition must be corroborated either by evidence from the USPS or by evidence that came into being after deposit and within one business day of the deposit of the correspondence in the Express Mail drop box (e.g., a copy of a log book indicating that the correspondence was deposited on the date in question). See MPEP 513 and TMEP 702.02(e).

Alternative Procedure Invoking "Extraordinary Circumstances"

If a party can demonstrate that due to extraordinary circumstances the above procedures could not be followed, it will be necessary to file a petition under 37 C.F.R. 1.183 (patent matter) or 2.146(a)(5) and 2.148 (trademark matter) to waive the requirements of 37 C.F.R. 1.10 to permit the USPTO to accord the correspondence a filing date as of the date that Express Mail deposit was attempted. Such a petition must be accompanied by a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail, stating the date that the deposit was attempted and that the USPS refused to accept the correspondence, and be signed by such person subject to the conditions prescribed in 37 CFR 10.18.

Certificates of Mailing Under 37 CFR 1.8

Parties submitting correspondence to the USPTO are reminded that 37 CFR 1.8 (certificate of mailing or transmission practice) does not provide for according a filing date as of the date of deposit with the USPS to correspondence submitted under 37 CFR 1.8. Therefore, it would be inappropriate to file a petition under 37 CFR 1.183 or 2.146(a)(5) and 2.148 to waive the requirements of 37 CFR 1.8.

Petitioners provided, on 8 July, 2002, with a request for a corrected filing receipt, a copy of the Express Mail customer label showing a "date-in" of 16 November, 2001, and bearing Express Mail number EL531588165US (the same Express Mail number found on the itemized transmittal sheet accompanying the original application papers located in the official file. Based on the submission filed on 8 July, 2002, and counsel's statement filed with the present petition, it is concluded that the present application would have been filed on 16 November, 2001, if it were not for the designated interruption in the USPS.

Accordingly, the application will be accorded a filing date of 16 November, 2001.

No petition fee is required.

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The application is being returned to the Office of Initial Patent Examination for correction of the filing date to 16 November, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



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